

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Baltimore Division

2008 JUL 29 A 11:55
CLERK'S OFFICE
AT BALTIMORE

BY _____ DEPUTY

UNITED STATES OF AMERICA)

v.)

CHRISTOPHER C. CARTWRIGHT,)

Defendant.)

Criminal No. WMN-07-0570

Dated: July 29, 2008

Violation: 18 U.S.C. § 371
18 U.S.C. § 1343, 1346, 1349
18 U.S.C. § 1832

PLEA AGREEMENT

The United States of America and Christopher C. Cartwright ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

- (f) not to be compelled to incriminate himself;
- (g) to appeal his conviction, if he is found guilty; and
- (h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in paragraph 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in the United States District Court for the District of Maryland. The defendant also knowingly and voluntarily waives the right to file any appeal, including but not limited to an appeal under 18 U.S.C. § 3742, unless the sentence imposed by the Court is above an Offense Level 13, in which case defendant's appeal will be expressly limited to contesting that portion of the sentence above an Offense Level 13. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). The defendant will plead guilty to Count Two of the Indictment filed in the United States District Court in Maryland on December 5, 2007, for conspiring to defraud Kropp Holdings, Inc., d/b/a Avcard (hereinafter "Avcard"), a Maryland company, of the intangible right to the honest services of its employee, Matthew Bittenbender, in violation of Title 18, United States Code, Sections 1343, 1346 and 1349. At sentencing, the United States will move to dismiss Counts One and Three of the Indictment, which charge the defendant with conspiring to defraud the United States, in violation of Title 18, United States Code, Section 371, and conspiring to steal trade secrets in violation of Title 18, United States

Code, Section 1832(a)(5). The elements of the offense to which the defendant has agreed to plead guilty, and which the United States would prove if the case went to trial are as follows: That the defendant (i) conspired (ii) to devise a scheme and artifice to defraud Avcard of the intangible right to the honest services of its employee, Matthew Bittenbender, by means of materially false and fraudulent pretenses, representations and promises and (iii) used the interstate and foreign wires for the purpose of executing such a scheme. The defendant understands the elements of this offense, admits that he is guilty of this offense, and will so advise the Court.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, set forth in paragraph 4. The defendant agrees those facts establish his guilt beyond a reasonable doubt.

FACTUAL BASIS FOR OFFENSE CHARGED

4. The defendant knowingly, voluntarily, and truthfully admits as fact the allegations contained in Count Two of the Indictment of December 5, 2007, which relate to his participation in a conspiracy to defraud Avcard of the intangible right to the honest services of its employee, Matthew Bittenbender, including Paragraphs 1-10, 14 (A,B,D,E,H,J,K,O,P), 15, 16(1), 19; and 20 (D,E,F). Those allegations are incorporated herein by reference. In addition, the Defendant admits and agrees to allocute to the following facts:

In or about March 2005 Paul Wilkinson and Christopher Cartwright entered into a consultancy agreement with Matthew Bittenbender wherein Mr. Bittenbender agreed to assist in the preparation and filing of DESC bids on behalf of two companies in which Mr. Wilkinson and Mr. Cartwright had an interest – FERAS and Aerocontrol, Ltd. Under the terms of our agreement Mr. Bittenbender would be paid a flat fee plus a commission

on profits obtained from successful bids. At the time we entered into the agreement Mr. Cartwright knew that Mr. Bittenbender was employed by AVCARD, which was paying his salary, and that Mr. Bittenbender owed a fiduciary duty to AVCARD. Nonetheless, Mr. Cartwright and Mr. Wilkinson availed themselves of Mr. Bittenbender's services pursuant to the consultancy agreement. For these reasons Mr. Cartwright was aware that he was unlawfully agreeing with others to have Mr. Bittenbender breach his fiduciary duty to AVCARD by denying to AVCARD Mr. Bittenbender's undivided, loyal and honest services, to AVCARD's financial detriment.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1349 is:

- (a) a term of imprisonment for twenty (20) years (18 U.S.C. § 1349);
- (b) a fine in an amount equal to the greatest of (1) \$250,000; or (2) twice the gross pecuniary gain the conspirators derived from the crime; or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators; and
- (c) a term of supervised release of not more than three years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); U.S.S.G. § 5D1.2(a)(2)).

6. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663A(c)(1)(A)(ii), the Court shall order him to pay restitution to the victims of the offenses; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not

mandatory, and that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). The defendant agrees that this plea agreement, along with the record created by the United States and the defendant at the plea and sentencing hearings will provide sufficient information concerning the defendant, the crimes charged, and the defendant's role in the crimes to enable the meaningful exercise of the Court's sentencing authority under 18 U.S.C. § 3553.

SENTENCING AGREEMENT

8. The United States and the defendant understand, agree and stipulate to the following applicable Sentencing Guidelines considerations and factors:

- (a) The November 1, 2007 edition of the Guidelines applies;
- (b) The controlling Guideline applicable to Count 2 is U.S.S.G. § 2B1.1;
- (c) Pursuant to the Guidelines § 2B1.1(a)(1), the base offense level is 7;
- (d) The loss intended by the offense is more than \$30,000, and therefore, a six-level increase is appropriate pursuant to U.S.S.C. § 2B1.1(b)(1)(D);
- (e) A substantial part of the fraudulent scheme was committed from outside the United States, and therefore, an additional two-level increase is appropriate pursuant to U.S.S.G. § 2B1.1(b)(9)(B);
- (f) The resulting Total Offense Level is 15.

(g) The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The defendant is free, however, to ask the Court to consider the factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence; the defendant understands that the United States may oppose the defendant's sentencing recommendation based on those factors.

9. The United States does not oppose a two-level reduction in the defendant's offense level, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. The United States may oppose any adjustment for acceptance of responsibility if the defendant (a) fails to admit the allegations as set forth in Paragraph 4 above; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. If the Court accepts this two-level reduction for acceptance of responsibility, the resulting Adjusted Offense Level is 13.

10. The defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history or criminal history category could alter his offense level, if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

11. The United States and the defendant agree that with respect to the calculation of

the advisory Guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments as set forth in Chapters 2, 3, 4, or 5 of the Sentencing Guidelines will be raised, argued, or are in dispute.

12. At the time of sentencing, consistent with the Guidelines considerations and factors stipulated to above, the United States will recommend that the Court impose a sentence within Offense Level 13, but will not recommend a period of incarceration exceeding 15 months. The defendant understands that this recommendation is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw his guilty plea.

13. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Guidelines calculations provided for in paragraph 8 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommended Guidelines calculation contained in this Agreement, he nevertheless has no right to withdraw his guilty plea.

RESTITUTION

14. The defendant agrees to the entry of a restitution order for the full amount of the victim's losses incurred as a result of the conspiracy to defraud Avcord of the honest services of its employee, Matthew Bittenbender, as described in Paragraph 4 above, pursuant to 18 U.S.C. §§ 3556, 3663A(c)(1)(A)(ii), and 3664(f)(1)(A), as determined by the Court at sentencing.

GOVERNMENT'S AGREEMENT

15. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was

undertaken in furtherance of the crimes arising from the facts set forth in the Indictment of December 5, 2007 and in this Plea Agreement (“Relevant Offense”). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

16. The defendant understands that he may be subject to administrative action by federal or state agencies other than the Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take.

REPRESENTATION BY COUNSEL

17. The defendant has reviewed all legal and factual aspects of this case with his attorneys and is fully satisfied with his attorneys’ legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorneys and has received satisfactory explanations from his attorneys concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorneys and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

18. The defendant’s decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

19. The defendant agrees that should the United States determine in good faith that the defendant has violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant may seek Court review of any determination made by the United States under this paragraph to void any of its obligations under the Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

20. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

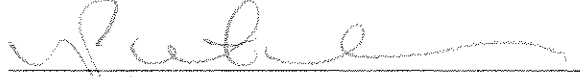
21. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

22. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

23. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

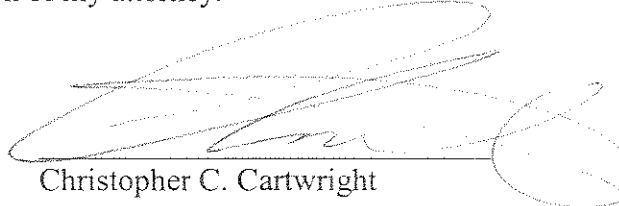
DATED this 29 day of July, 2008.

By:


Mark W. Pletcher
Portia R. Brown
John F. Terzaken
Trial Attorneys
United States Department of Justice
Antitrust Division, Criminal Enforcement Section

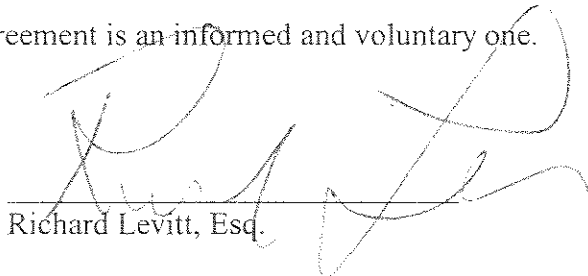
I have read this Plea Agreement and carefully reviewed every part of it with my attorneys. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the factual and advisory guidelines stipulations with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

7-29-08
Date


Christopher C. Cartwright

I am Christopher C. Cartwright's attorney. I have carefully reviewed every part of this agreement with him, including the factual and advisory guidelines stipulations. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

7-29-08
Date


Richard Levitt, Esq.